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FILED
2011 NOV 22 A 11: 40
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SCOTT RIEGER, PLAINTIFF,	CASE NO. C11-04202MEJ
VS.	The Honorable Maria-Elaina James
American Express Company, DEFENDANT.	**OPPOSITION TO DEFENDANTS MOTION TO DISMISS**

COMPLAINT

Plaintiff, Scott Rieger, individually, hereby sues Defendant, American Express Company hereinafter "AMEX", for violations of the Fair Credit Reporting Act (FCRA) 15 U.S.C. § 1681 *et seq.*

PRELIMINARY STATEMENT

1. This is an action for damages brought from violations of the Fair Credit Reporting Act (FCRA) 15 U.S.C. § 1681 *et seq.*

JURISDICTION

2. This court has jurisdiction under 15 U.S.C. §1681p and 28 U.S.C §1331.

3. All conditions precedent to the bringing of this action have been performed.

PARTIES

4. Plaintiff, Scott Rieger, is a natural person who resides in the City of Fremont, County of Alameda, State of California, and is a "consumer" within the meaning of the FCRA, 15 U.S.C. § 1681a(c).

5. Defendant AMEX, is a New York corporation with its principal place of business in New York, with office are located at 200 Vesey Street, New York, NY 10285.

VENUE

6. The occurrences which give rise to this action occurred in Alameda County, California and Plaintiff resides in Alameda County, California.
7. Venue is proper in the Northern District of California.

FACTUAL ALLEGATIONS

8. Plaintiff pulled his consumer credit reports from the three major credit reporting agencies and found entries by entities that he was unfamiliar with in the reports.
9. Plaintiff determined that his consumer credit report had been pulled on various occasions by various entities he did not recognize and without his consent.
10. Discovery of violations brought forth herein occurred in June 2011 and are within the statute of limitations as defined in FCRA, 15 U.S.C. § 1681p.
11. On November 19, 2009, Defendant AMEX initiated a pull of Plaintiff's credit report from Experian without permissible purpose.
12. On December 14, 2009, Defendant AMEX initiated a pull of Plaintiff's credit report from Experian without permissible purpose.

13. On January 22, 2010, Defendant AMEX initiated a pull of Plaintiff's credit report from Experian without permissible purpose.

14. On February 22, 2010, Defendant AMEX initiated a pull of Plaintiff's credit report from Experian without permissible purpose.

15. On March 25, 2010, Defendant AMEX initiated a pull of Plaintiff's credit report from Experian without permissible purpose.

16. On April 30, 2010, Defendant AMEX initiated a pull of Plaintiff's credit report from Experian without permissible purpose.

17. On May 21, 2010, Defendant AMEX initiated a pull of Plaintiff's credit report from Experian without permissible purpose.

18. In June 23, 2010, Defendant AMEX initiated a pull of Plaintiff's credit report from Experian without permissible purpose.

COUNT I
VIOLATION OF FAIR CREDIT REPORTING ACT (FCRA), 15 U.S.C. § 1681
WILLFUL NON-COMPLIANCE BY DEFENDANT AMEX

19. Paragraphs 1 through 18 are realleged as though fully set forth herein.

20. Plaintiff is a consumer within the meaning of the FCRA, 15 U.S.C. § 1681a(c).

21. Experian is a credit reporting agency within the meaning of the FCRA, 15 U.S.C. § 1681a(f).

22. Consumer credit report is a consumer report within the meaning of the FCRA, 15 U.S.C. § 1681a(d).

23. The FCRA, 15 U.S.C. § 1681b defines the permissible purposes for which a person may obtain a consumer credit report.

24. Such permissible purposes as defined by 15 U.S.C. § 1681b are generally, if the consumer makes application for credit, makes application for employment, for underwriting of insurance involving the consumer, or is offered a bona fide offer of credit as a result of the inquiry.

25. Plaintiff has never had any business dealings or any accounts with, made application for credit from, made application for employment with, applied for insurance from, or received a bona fide offer of credit from the Defendant AMEX COMPANY.

26. At no time did Plaintiff give his consent for Defendant AMEX COMAPNY, to acquire his consumer credit report from any credit reporting agency.

27. Plaintiff sent to Experian an inquiry as to the purpose of Defendant AMEX COMPANY's request for Plaintiffs credit information and has not received a response.

28. In paragraphs 11-18, Defendant AMEX COMPANY obtained the Experian consumer credit report for the Plaintiff with no permissible purpose in violation of FCRA, 15 U.S.C. § 1681b. Plaintiff has no idea or indication as to what possible alleged account AMEX COMPANY could claim to have with his and is positive he had no account with AMEX COMPANY, which would come under the definition of account in the FCRA in regard to permissible purpose.

29. The action of Defendant AMEX COMPANY obtaining the consumer credit report of the Plaintiff with no permissible purpose or Plaintiff's consent was a violation of FCRA, 15 U.S.C. § 1681b and an egregious violation of Plaintiff's right to privacy.

30. FCRA in 15 U.S.C. §1681a(r)(4) states: The terms "account" and "electronic fund transfer" have the same meanings as in section 1693a of this title.

> (2) the term "account" means a demand deposit, savings deposit, or other asset account (other than an occasional or incidental credit balance in an open end credit plan as defined in section 1603(i) of this Act), as described in regulations of the Board, established primarily for personal, family, or household purposes, but such term does not include an account held by a financial institution pursuant to a bona fide trust agreement;

31. The definition of "account" clearly does not include an account such as a credit card open end credit account but does include a demand deposit account, savings deposit or other asset account which is wholly different. The Plaintiff never had any such account so there was obviously no permissible purpose for the credit pull.

32. U.S.C. §1681s(a)(2).

AMERICAN EXPRESS willfully violated the FCRA. Defendant's violations include, but are not limited to, the following:

(a) AMERICAN EXPRESS willfully violated 15 U.S.C. §1681b(f) by obtaining Plaintiff's consumer report without a permissible purpose as defined by15 U.S.C. §1681b.

WHEREFORE, Plaintiff demands judgment for damages in the amount of $8,000 against AMERICAN EXPRESS for actual damages, and attorney's fees and costs, pursuant to 15 U.S.C. § 1681n.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury of all issues so triable as a matter of law.

Respectfully submitted this 22st day of November 2011 by:

Scott Rieger
2697 Parkside Drive.
Fremont, CA 9436
(510) 456-5364
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VERIFICATION

I, **Scott I. Rieger**, do swear and affirm that all statements made herein are true and accurate, in all respects, to the best of my knowledge.

Scott I. Rieger

State of CALIFORNIA)
) **ss**
County of ALAMEDA)

BEFORE ME personally appeared **Scott I. Rieger**, who, being by me first duly sworn and identified in accordance with California law, did execute the foregoing in my presence this 22nd day of November, 2011.

Ruta Chaudhari

Notary Public

RUTA CHAUDHARI
COMM. #1828860
Notary Public - California
Alameda County
My Comm. Expires Jan. 26, 2013
NR01 NR01

[Seal]

My commission expires: Jan. 26, 2013

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and complete copy of the above and foregoing served this 22 day of November, 2011, by depositing same in the United States Mail, properly addressed and with sufficient postage prepaid, upon:

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